

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FILED

FEB 27 2006

NO. 5:01-CR-211-1-1B0

FRED L. BORCH III, CLERK
US DISTRICT COURT, EDNC
BY _____ DEP CLK

UNITED STATES OF AMERICA)
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)
DAVID A. PASSARO)

**GOVERNMENT'S MOTION TO SCHEDULE AN IN CAMERA HEARING
TO DETERMINE MATTERS UNDER SECTION 6
OF THE CLASSIFIED INFORMATION PROCEDURES ACT**

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves this honorable court to schedule an in camera hearing pursuant to Section 6(a) of the Classified Information Procedures Act, 18 U.S.C. App. 3 ("CIPA"). In support thereof, states the following:

This case is presently scheduled to commence trial on April 3, 2006. On November 23, 2005, the Government moved this court to conduct an ex parte hearing pursuant to Section 6 of the CIPA and to make all determinations concerning use, relevance, or admissibility of classified information.¹ CIPA requires after such a pre-trial hearing, the Court "shall set forth in writing the basis for its determination." The statute further requires the

¹ In that motion, the Government represented that it had "applied for the certification of the Assistant Attorney General for the Criminal Division, Alice S. Fisher, exercising the authority of the Attorney General for this purpose pursuant to Section 14 of CIPA." (Motion at 1). On November 29, 2005 the Government received certification from the Assistant Attorney General Fisher and has enclosed a copy as an attachment to this motion.

c: Boyle & FPD

court to rule prior to the commencement of the trial. CIPA Section 6(a).


Due to the large amount of classified information proffered by the Defendant in his CIPA Section 5 notice, the Government expects the hearing to take approximately two full days of the Court's time. Thereafter, the parties shall await written rulings from the Court on all matters in dispute regarding the handling of classified information at trial. Due to the complexity of the issues presented, the Government requests a minimum of five days notice.

The Government believes it will need thirty days from the date the Court enters its ruling, pursuant to CIPA Section 6, admitting and excluding classified information, in order to determine what witnesses will be available and called for testimony at trial. This time is necessary due to the difficulty in producing witnesses presently located throughout the world, a number of whom are in an operational military environment.

WHEREFORE, the United States respectfully requests that, the Court schedule a hearing pursuant to CIPA Section 6 and to schedule trial no sooner than thirty days from the date of any written ruling resulting from such hearing.

Respectfully submitted this 24th day of February, 2006.

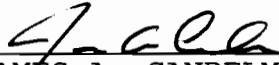
FRANK W. WHITNEY
United States Attorney


BY: JAMES A. CANDELMO
Assistant United States Attorney
Criminal Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was delivered via courier
this 27th day of February, 2006, to:

Thomas McNamara
Federal Public Defender
Raleigh, North Carolina



JAMES A. CANDELMO
Assistant United States Attorney

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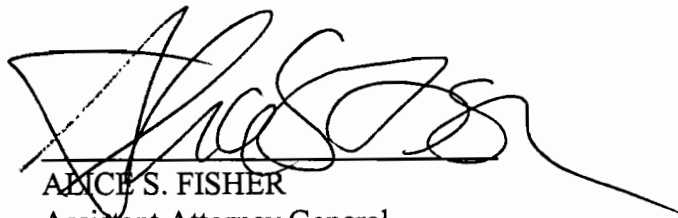
**PETITION OF THE ASSISTANT ATTORNEY GENERAL,
CRIMINAL DIVISION, FOR IN CAMERA HEARING**

4. The matters stated herein are based upon my knowledge, upon review and consideration of documents and information available to me in my official capacity as Assistant

Attorney General, Criminal Division, upon discussions I have had with other Justice Department officials, and upon consideration of a letter submitted by the Office of General Counsel, Central Intelligence Agency.

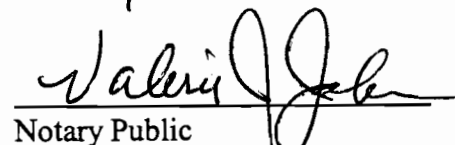
5. I hereby certify that a public proceeding under Section 6(a) of CIPA may result in the disclosure of classified information.

6. I respectfully request that this court, pursuant to Section 6(a) of CIPA, conduct an in camera hearing and make all determinations concerning the use, relevance, and admissibility of classified information that would otherwise be made during trial or pretrial proceedings in this matter.


ALICE S. FISHER
Assistant Attorney General
Criminal Division

Subscribed to and Sworn to before me this 29th day of November, 2005.

My commission expires on 2/29/09.


Notary Public
D.C.

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Office of General Counsel

16 November 2005

VIA FACSIMILE

Clifford Rones, Esq.
Counterespionage Section
Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W. - 9th Floor
Washington, DC 20005

Re: U.S. v. Passaro, No. 5:04-CR-211-BO (E.D.N.C.)

Dear Mr. Rones:

I am writing this letter in support of the Government's motion that CIPA section 6 hearings in the above-referenced matter be held in camera pursuant to section 6(a) of the Classified Information Procedures Act (CIPA), 18 U.S.C. App. 3. I have reviewed the relevant pleadings in this case and consulted with the appropriate officials within the Central Intelligence Agency (CIA) Directorate of Operations. I hereby certify that a public proceeding may result in the disclosure of classified information and, on behalf of the CIA, request the Attorney General or his designee seek closure of these proceedings.

CIPA section 6 hearings are anticipated to litigate defendant's previously filed notice under CIPA section 5 of the classified information defendant reasonably expects to disclose or to cause to be disclosed at trial. Public discussion of defendant's section 5 notice would reveal intelligence sources and methods and reasonably could be expected to cause serious or exceptionally grave damage to the national security.

Specifically, the defense notices indicate an intention to disclose several areas of classified information, and cite to specific classified documents. Argument on these areas and


Clifford Rones, Esq.

documents will necessarily require discussion of classified information and consequently will require in camera proceedings. The following is a list of specific classified intelligence sources and methods, among others, that require in camera proceedings:

- Information concerning CIA's covert locations overseas;
- Information concerning CIA's covert locations in the United States;
- The true names of covert CIA officers and contractors; and
- The identities of paid clandestine human sources.

Thank you for your coordination on this matter and please feel free to contact me with any questions or concerns.

Sincerely



Brian S. Morrison
Assistant General Counsel